

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8162 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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CHHOTALAL SHAMJI VIRANI

Versus

COMPETENT AUTHORITY AND DY. COLLECTOR (ULC), RAJKOT & ANR.

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Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 30th November 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 26th February 1988 in Appeal No. Rajkot-1156 of 1984 is

under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be surplus by 3334.98 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot and also one flat in Bombay. That form was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 30th March 1984 under sec. 8(4) thereof, respondent No.1 declared the holding of the petitioner to be surplus by 3334.98 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-1156 of 1984. By the order passed by respondent No.2 on 26th February 1988 in the aforesaid appeal, it came to be dismissed. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. Shri Nanavaty for the petitioner is right in his submission that the constructed properties on the date of coming into force of the Act will have to be excluded from the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567. It transpires from the material on record that the total holding of the petitioner was to the tune of 5304.09 square meters. The total area of the constructed property was found to be 1969.11 square meters. It is not in dispute that these constructed properties were in existence prior to coming into force of the Act as they were mentioned in the declaration in the prescribed form under sec. 6(1) of the Act. These constructed properties will have to be excluded from the petitioner's holding in view of the aforesaid binding ruling of the Supreme Court. That would leave the balance area to be the holding of the petitioner. That would come to 3334.98 square meters. The ceiling limit prescribed for the urban agglomeration of Rajkot under the Act is 1500 square meters. The petitioner's holding can be said to be in excess of the ceiling limit by 1834.98 square meters.

4. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition

as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law in toto. The area declared surplus therein will have to be modified by substituting the figure of 1834.98 square meters for the figure of 3334.98 square meters. It is hereby clarified by way of abundant caution that the petitioner's holding is in excess of the ceiling limit by 1834.98 square meters. The matter will have to be remanded to respondent No.1 for preparing the final statement according to law in the light of this judgment of mine after giving an opportunity of selection to the petitioner for surrendering the surplus land.

5. In the result, this petition is accepted to the aforesaid extent. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 30th March 1984 under sec. 8(4) of the Act at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 26th February 1988 in Appeal No. Rajkot-1156 of 1984 at Annexure B to this petition is maintained subject to the modification that the surplus land to be declared in the holding of the petitioner is modified from 3334.98 square meters to 1834.98 square meters. By way of abundant caution it is hereby clarified that the petitioner's holding is in excess of the ceiling limit by 1834.98 square meters. The matter is remanded to respondent No.1 for preparation of the final statement under sec. 9 of the Act in the light of this judgment of mine after giving an opportunity of selection to the petitioner for surrender of the surplus land. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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